

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: DANIELLE KAUFFMAN : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: DANIELLE KAUFFMAN : No. 477 EDA 2013

Appeal from the Order January 11, 2013,
Court of Common Pleas, Delaware County,
Criminal Division at No. CP-23-MD-0002605-2012

BEFORE: GANTMAN, DONOHUE and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED DECEMBER 04, 2013

Danielle Kauffman (“Kauffman”) appeals from the January 11, 2013 order entered by the Court of Common Pleas, Delaware County, following the extradition court’s denial of her petition for writ of *habeas corpus* and directing her extradition to the State of Delaware. Upon review, we affirm.

The Commonwealth arrested Kauffman pursuant to the Uniform Criminal Extradition Act, 42 Pa.C.S.A. §§ 9121-9148 (“the Act”) on August 7, 2012, as she was a fugitive from justice in the State of Delaware.¹ The court held an extradition hearing on August 15, 2012, at which time Kauffman requested a continuance, as she wanted to address the charge she faced in Pennsylvania – attempted homicide – prior to dealing with her extradition to Delaware, as it would “give her [...] some peace of mind[.]”

¹ The warrant does not appear in the certified record on appeal and the docket does not indicate the date of Kauffman’s arrest. At the hearing on Kauffman’s writ of *habeas corpus*, however, the Commonwealth agreed that August 7, 2012 is the correct date of arrest. **See** N.T., 1/11/13, at 17.

N.T., 8/15/12, at 3-4. Counsel for Kauffman further represented that although Kauffman did not want to waive extradition that day, she would “[i]n all probability” waive extradition at the next proceeding if she was able to get the Pennsylvania charges reduced. *Id.* at 5-6. The extradition court granted Kauffman’s request for a continuance, rescheduling the matter for September 19, 2012. When Kauffman did not waive extradition at that proceeding, the Commonwealth initiated the process of obtaining a Governor’s warrant for her extradition to Delaware.²

The Commonwealth received a Governor’s warrant on November 26, 2012, and served Kauffman with the warrant on November 30, 2012. The extradition court ordered Kauffman’s extradition that same day. As of November 30, 2012, Kaufman had been incarcerated on the fugitive warrant for 115 days – 25 days beyond the 90-day time period prescribed by Sections 9126 and 9138 of the Act.³

² No notes of testimony from the September 19, 2012 proceeding appear in the certified record on appeal. The procedural history of the case, however, is uncontested. **See** N.T., 1/11/13, at 18-19.

³ These sections state:

§ 9136. Commitment to await requisition

If from the examination before the judge or issuing authority it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 9127 (relating to extradition of persons not present in demanding state at time of commission of crime),

On December 3, 2012, Kauffman filed a petition for writ of *habeas corpus*, asserting that the Commonwealth failed to prove that she was in fact subject to extradition. Kauffman further averred that because of the Commonwealth's failure to serve the extradition papers within 90 days as required by Sections 9136 and 9138 of the Act, she was entitled to the dismissal of the fugitive warrant.

The extradition court held a hearing on the petition on January 11, 2013, at which the Commonwealth presented uncontested testimony that

that he has fled from justice, the judge or issuing authority must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in section 9137 (relating to bail), or until he shall be legally discharged.

42 Pa.C.S.A. § 9136

§ 9138. Extension of time of commitment

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or issuing authority may discharge him or may recommit him for a further period, not to exceed 60 days, or a judge or issuing authority may again take bail for his appearance and surrender, as provided in section 9137 (relating to bail), but within a period not to exceed 60 days after the date of such new bond.

42 Pa.C.S.A. § 9138.

Kauffman was a fugitive from justice in the State of Delaware on multiple charges. After the completion of testimony, both parties presented argument regarding the timeliness of the Governor's warrant. At the conclusion of the hearing, the extradition court denied Kauffman's petition. As of the January 11, 2013 hearing on her writ of *habeas corpus*, Kauffman remained incarcerated for the Pennsylvania attempted homicide charge and was awaiting the preliminary hearing on that charge.

This timely appeal follows, wherein Kauffman raises one issue for our review: "Whether the [extradition c]ourt erred when it denied [] Kauffman's Petition for Writ of *Habeas Corpus* and [o]rdered her extradition to the State of Delaware since the Governor's Warrant was not timely filed or executed?" Kauffman's Brief at 5. We review the denial of a petition for writ of *habeas corpus* for an abuse of discretion. ***In re Garcia***, 984 A.2d 506, 508 (Pa. Super. 2009) (citation omitted).

The Act governs extradition of persons present in Pennsylvania who have been charged with a crime and are wanted in another jurisdiction. The Act provides, in relevant part, that a person who "has fled from justice" in another state must be committed to the county jail⁴ for a period, not exceeding 30 days, to allow for the arrest of the accused pursuant to a Governor's warrant by the state where the offense occurred. 42 Pa.C.S.A. §

⁴ In certain circumstances, the Act permits the judge or issuing authority of the Commonwealth to grant the accused bail. 42 Pa.C.S.A. § 9137.

9136. If the accused is not arrested pursuant to a Governor's warrant within the 30-day period, he or she may be recommitted to the county jail for an additional period, not exceeding 60 days. 42 Pa.C.S.A. § 9138. "[E]ven though the alleged fugitive may already be in custody on other charges, the lodging of a detainer commences the period under [the Act]." **Commonwealth v. Quackenbush**, 435 A.2d 872, 874 (Pa. Super. 1981) (citing **Commonwealth ex rel. Knowles v. Lester**, 456 Pa. 423, 321 A.2d 637 (1974)).

"[T]he courts of this Commonwealth have an obligation to make certain that the requirements of [the Act] have been satisfied before permitting one to be surrendered to the executive authority of the demanding state." **Commonwealth ex rel. Myers v. Case**, 378 A.2d 917, 919 (Pa. Super. 1977) (*en banc*) (citation and internal formatting omitted). "However, technical or formal objections will not invalidate an extradition proceeding." **Id.**

In this appeal, Kauffman does not contest the extradition court's finding that the necessary elements for extradition have been met.⁵ Rather, she contends that the Commonwealth's failure to obtain and serve her with a

⁵ "Extradition is a constitutionally mandated process and will be ordered if the subject of the extradition (1) is charged with a crime in the demanding state, (2) is a fugitive from the demanding state, (3) was present in the demanding state at the time of the commission of the crime, and (4) if the requisition papers are in order." **Commonwealth ex rel. Berry v. Aytch**, 385 A.2d 354, 356 (Pa. Super. 1978) (*en banc*) (internal citations omitted).

Governor's warrant within 90 days of her arrest as a fugitive entitled her to discharge. Kauffman's Brief at 10-13. She states that there is nothing in the Act that calls for time that is excludable from the 90-day time period, and that the Commonwealth's failure to commence the process of obtaining a Governor's warrant from the State of Delaware until over a month after her arrest cannot be excused simply because she requested and was granted a continuance of the initial extradition hearing. *Id.* at 11-12.

The extradition court found that the Commonwealth substantially complied with the Act, citing case law that advocates against a mechanical application of the 90-day timeframe when there is substantial compliance under the Act. Extradition Court Opinion, 6/27/13, at 2-3 (citing *Quackenbush*, 435 A.2d at 874-75; *Commonwealth ex rel. Osburn v. Haas*, 439 Pa. 341, 268 A.2d 85 (1970); *Myers*, 378 A.2d at 919). The extradition court further found that the 35 days that constituted the continuance granted at Kauffman's request did not count toward the 90-day time limit under the Act, and by removing those days from the total, the Commonwealth obtained and served the Governor's warrant within the prescribed 90-day period. *Id.* at 3. The Commonwealth echoes the extradition court's conclusions, asserting that it did not immediately request a Governor's warrant in reasonable reliance upon Kauffman's counsel's representation that Kauffman would likely waive extradition at the next hearing. Commonwealth's Brief at 7.

Preliminarily, we agree with Kauffman that there is nothing in the Act to support a finding that a continuance granted at the defendant's request is excludable from the 90-day timeframe. "We are bound by the unambiguous language of the statute and cannot read language into it that simply does not appear." **Commonwealth v. Vasquez**, 562 Pa. 120, 124, 753 A.2d 807, 809 (2000) (citing 1 Pa.C.S.A. § 1921(b)). "It is not within the province of this Court to second guess the legislature and to add words to a statute where the legislature has failed to supply them." **Guinn v. Alburtis Fire Co.**, 531 Pa. 500, 503 n.4, 614 A.2d 218, 220 n.4 (1992).

The Legislature expressly included "excludable time" in the Interstate Agreement on Detainers, 42 Pa.C.S.A. §§ 9101-9108, a closely related statute, which expressly tolls the timeframe within which a defendant must be tried when the defendant is unavailable for trial.⁶ The failure of the General Assembly to include such a provision in the Act gives rise to the inference that the exclusion was intentional. **Commonwealth v. DeFusco**, 549 A.2d 140, 141-42 (Pa. Super. 1988).

However, Kauffman's contention that the Act requires the Commonwealth to obtain the Governor's warrant within 90 days of her arrest

⁶ The Interstate Agreement on Detainers applies to defendants serving a criminal sentence in one jurisdiction who are wanted in another jurisdiction. It provides that the defendant must be brought to trial within 180 days of his or her delivery of a request for final disposition to the prosecuting officer of the state in which he or she is wanted. 42 Pa.C.S.A. § 9101, Art. III. The 180 days is tolled, however, during periods of time when the defendant is unavailable for trial. 42 Pa.C.S.A. § 9101, Art. VI.

on a fugitive warrant is incorrect. Rather, “[t]he ninety-day period in the [A]ct merely limits the time an accused may be incarcerated while awaiting a Governor’s warrant; it does not require that a Governor’s warrant issue within the ninety-day period.” **Commonwealth v. Storms**, 504 A.2d 329, 330 (Pa. Super. 1986); **see** 42 Pa.C.S.A. §§ 9136, 9138. It is well settled that if a defendant has been held on a fugitive detainer and then discharged from custody, there is no prohibition against his or her re-arrest, even if the Governor’s warrant pre-dates the defendant’s discharge. **See Commonwealth ex rel. Harmon v. Frane**, 524 A.2d 906, 907 (Pa. Super. 1987) (defendant released from custody on June 30, 1986, and on July 3, 1986, was rearrested on a Governor’s warrant dated June 16, 1986); **Storms**, 504 A.2d at 329 (defendant discharged from imprisonment as a fugitive on April 10, 1985, the 91st day of his incarceration, and re-arrested the same day on a Governor’s warrant dated April 9, 1985). Therefore, if Kauffman had been discharged at the conclusion of the 90-day period of incarceration on the fugitive warrant, the Commonwealth lawfully could have re-arrested her and served her with the Governor’s warrant already obtained without any violation of the Act.

We recognize that Kauffman was not discharged and the Commonwealth did not re-arrest her. It is uncontested, however, that Kauffman was otherwise legally incarcerated on the Pennsylvania attempted homicide charges, for which, at the time of the hearing on her *habeas*

petition, a preliminary hearing had yet to be held. N.T., 1/11/13, at 25-26. By Kauffman's admission through counsel, she was not going to be able to post bail on those charges.⁷ **Id.** at 28. Therefore, "we cannot see what possible harm [Kauffman] suffered by virtue of the failure formally to re-arrest [her]." **Osburn**, 439 Pa. at 345-46, 268 A.2d at 87 (finding substantial compliance with the Act and proper dismissal of the appellant's writ of *habeas corpus* despite the fact that the appellant was not formally re-arrested within 30 days of his initial arrest).

We observe that in **Commonwealth ex rel. Knowles v. Lester**, our Supreme Court held that "a detainer lodged against an in-custody accused constitutes an additional restraint upon his liberty." **Knowles**, 456 Pa. at 427, 321 A.2d at 640. In that case, the defendant was arrested on local charges and pursuant to a fugitive detainer the same day. He was held on the fugitive detainer for 141 days before being arraigned; the local charges against the defendant were dismissed six days prior to his hearing on the fugitive warrant. **Id.** at 425-26, 321 A.2d at 639. Our Supreme Court found that this violated the Act's prohibition against confinement for more than 30 days without a hearing and that the defendant was entitled to the remedy of *habeas corpus*, as the fugitive warrant "imposed a restraint in addition to

⁷ According to Kauffman's counsel, bail was set on the Pennsylvania attempted homicide charges at \$750,000.00. N/T/, 1/11/13, at 25.

that exerted by arrest on the local charges[.]” **Id.** at 427-28, 341 A.2d at 640-41.

The case before us differs significantly from **Knowles** in that we have clear evidence that the fugitive warrant did not operate as an additional restraint on Kauffman’s liberty. By her own admission, Kauffman was concomitantly incarcerated on local attempted homicide charges for which she was not being released or able to post bail. Thus, the concerns present in **Knowles** are not present here.

This case is more closely aligned with this Court’s *en banc* decision in **Commonwealth ex rel. Myers v. Case**. In that case, the defendant was arrested on local charges and a fugitive warrant the same day. **Myers**, 378 A.2d at 918. The Commonwealth obtained a Governor’s warrant within 90 days of the defendant’s arrest, but did not serve it upon the defendant until 15 days after the expiration of 90 days, when the defendant was paroled from his sentence on the local charges. **Id.** This Court found that the defendant was not entitled to *habeas corpus* relief, as the Commonwealth’s violation of the act was “technical.” **Id.** at 920.

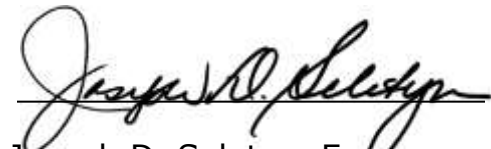
Although Kauffman was detained for more than 90 days on the fugitive warrant in violation of the Act, she was not prejudiced by the failure to discharge her and formally re-arrest her. **See Osburn**, 439 Pa. at 345-46, 268 A.2d at 87. The violation of the Act in this case, as in **Myers**, was

technical, and thus does not entitle her to the remedy of *habeas corpus*.
See Myers, 378 A.2d at 919, 920.

Kauffman filed her petition for writ of *habeas corpus* after the Commonwealth served her with the Governor's warrant, which, as noted above, the Commonwealth was not required to obtain within 90 days of Kauffman's original arrest. **See Storms**, 504 A.2d at 330. At the time Kauffman requested *habeas corpus* relief, the extradition court had before it a valid Governor's warrant, proof that all elements for extradition had been met,⁸ and an admission by Kauffman that even if she was discharged from the fugitive warrant, she would have remained incarcerated and had no ability to obtain release. Therefore, under the circumstances present in this case, we find no abuse of discretion in the extradition court's denial of Kauffman's petition for writ of *habeas corpus*.⁹

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013

⁸ **See** N.T., 1/11/13, at 7-13.

⁹ "We can affirm the court's decision if there is any basis to support it, even if we rely on different grounds to affirm." **Commonwealth v. Lewis**, 39 A.3d 341, 345 (Pa. Super. 2012), *appeal denied*, 616 Pa. 667, 51 A.3d 838 (2012).