VERMONT SUPERIOR COURT
RUTLAND UNIT
CIVIL DIVISION

JAMES PERRON, Plaintiff v. LISA MENARD, Commissioner of Vermont Department of Corrections, Defendant.	Docket No. 83-2-17 Rdcv

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

James Perron petitions this court for a Writ of Habeas Corpus, challenging his detention at Marble Valley Correctional Facility pending the issuance of a Governor's Warrant for Extradition from New York.[1] A conference was held with the parties on February 21, and briefs were filed on February 24. Daniel Stevens, Esq., represents Perron; Peter Bevere, Esq. represents the State.

Facts

On January 17, 2017, the Vermont State Police received a notification that there was an extraditable New York arrest warrant outstanding for Perron, and that he could be found in Wallingford. He was located and arrested. The State's Attorney filed a complaint for extradition and a hearing was held in the Criminal Division. He is now held at Marble Valley on $100,000.00 bail, pending receipt by the court of a Governor's Warrant.

The New York arrest warrant, issued on November 10, 2016, states that Perron pled guilty on March 10, 2015 to Grand Larceny in the Third Degree and was sentenced to two to four years in prison. It does not state that he absconded, or that he was directed to report to jail on a particular

[1] "[H]abeas corpus is the proper mode of challenging a preextradition (or prerequisition) detention" when a defendant has been held pursuant to a fugitive charge. In re Hval, 148 Vt. 544, 545 (1987).

date. It does command any New York police officer to arrest him for the execution of his sentence. Perron concedes that he has not served the New York sentence.

The parties agree that, at some point after his New York sentence was imposed, Perron was sentenced on a federal charge and served time in federal custody. His complaint here alleges that after his sentencing, New York turned him over "to Federal Authorities based on a Federal Wire Fraud charge." Compl. ¶ 6. The State does not dispute this. Perron was released from federal custody in New Hampshire and arrested there on the New York warrant.[2] The New Hampshire court dismissed the extradition petition on January 25 for reasons that are not apparent from the records submitted here.[3]

Motion to Dismiss

At about the same time that this decision was being completed, the court received the State's motion to dismiss the case as moot. The motion alleges that Perron has now been served with a Governor's Warrant, making this proceeding moot. However, the motion does not attach a copy of the Governor's Warrant or any admissible evidence that it was served. Thus, the motion is denied and the court will rule on the merits.

Discussion

Perron argues that the New York arrest warrant does not make a prima facie showing of his status as a fugitive from the law, as required by Vermont's Uniform Criminal Extradition Act, 13 V.S.A. § 4941 et seq. ("UCEA"). He also argues that New York lost jurisdiction over him by failing to "take steps to secure [his] body while [he] was in federal custody." Compl. ¶ 6.

[2] Perron states on his request to proceed in forma pauperis that he was in "federal prison from October, 2014 until December 2016, and then in a New Hampshire prison until January, 2017." The court infers that he resolved his New York State charge while in federal detention in 2015.

[3] Perron alleges that the New Hampshire court dismissed the petition "because the New York warrant does not allege that [he is] a Fugitive from Justice" because "[he] had not escaped any confinement." Compl. ¶¶ 5-6. However, the paperwork from the New Hampshire court does not make the court's reasoning clear.

What is a Fugitive?

"Extradition is not a matter of comity or compact between the states." Bailey v. Laurie, 373 A.2d 482, 484 (R.I. 1977). It is mandated by Article IV of the United States Constitution, which states:

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Const. Art. IV § 2 cl. 2. The Uniform Criminal Extradition Act "was drafted to implement the constitutional requirements of art. IV and to set forth procedures to be followed in this area of the law." Bailey, 373 A.2d at 484. "Almost all states in the country. . . have adopted the Uniform Criminal Extradition Act." In re Hval, 148 Vt. 544, 549 (1987).

The Vermont UCEA states that "it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged with treason, felony, or any other crime, who has fled from justice and is found in this state." 13 V.S.A. § 4942. The statutory provision relevant here reads as follows:

> Whenever any person within [Vermont] shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and . . . having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole, or whenever complaint shall have been before a superior judge, assistant judge of the superior court, or judge of a district court within [Vermont], setting forth on the affidavit of a credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of a crime, and . . . has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole and is believed to have been found in this state, such judge shall issue a warrant directed to any sheriff or constable . . . to apprehend the person charged . . . and

> bring him before the same or any other superior judge . . . to answer the charge or complaint and affidavit.

13 V.S.A. § 4953.

Perron does not deny that he has a sentence to serve in New York, or that the New York warrant is valid. What he argues is that the language of Vermont's extradition statute does not apply because he did not purposely evade the New York sentence. Specifically, he argues—and the State does not deny—that New York consented to his departure to another state to face federal charges, and that he therefore neither "escaped" nor "fled." Therefore, he argues, he is not a "fugitive from justice." [4]

The UCEA does not define "fled from justice" or "escaped."[5] On their face, as Perron points out, both terms suggest an intent to avoid the obligation to face a charge or serve a sentence. Mem. in Support of Compl. at 3–4. However, the courts have not construed these terms so narrowly. Instead, a fugitive is merely someone who has been accused or convicted of a crime in one state, but found in another:

> [T]he simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he *consciously* fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding state. A person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the state,—no matter for what purpose or with what motive, nor under what belief,—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a

[4] Perron points to 13 V.S.A. § 4943 rather than 4953, but that section addresses the requirements of the Governor's Warrant rather than the requirements to hold someone pending receipt and review of the Governor's Warrant. The requirements, however, are similar. Section 4943(a) uses the phrase "fled from the state" rather than "fled from justice." The court does not find these terms to have different meanings.

[5] At the status conference, the court raised the question of whether Vermont's criminal escape statute provided useful guidance as to the meaning of "fled from justice" and "escaped from confinement." *See* 13 V.S.A. § 1501. However, the extradition statute is a uniform law. Thus, the court concludes that the interpretation of terms in the extradition statute must be guided by cases construing the uniform statute, rather than those construing Vermont's separate crime of escape. In re Hval, 148 Vt. at 549 ("When the policies among states are identical, we must be careful that the act of crossing a state boundary does not create different rights, undermining the expressed policies of all the states.").

> fugitive from justice, and if found in another state must be delivered up by the governor of such state to the state whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the governor of the state from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any state.

Appleyard v. Massachusetts, 203 U.S. 222, 227 (1901) (emphasis in original). Courts construing the UCEA have so interpreted it.[6] *See, e.g.*, Barrila v. Blake, 461 A.2d 1375, 1378 (Conn. 1983) ("A person is a fugitive from justice if he commits a crime in one state and is thereafter found in another state."); People ex rel. Arnold v. Hoy, 223 N.Y.S.2d 759, 762 (N.Y. Sup. Ct. 1961) (fugitive status arises from absence from demanding state, regardless of whether petitioner is absent under his own power or as a prisoner).

Thus, leaving a state where a petitioner committed a crime creates fugitive status even where the petitioner left that jurisdiction involuntarily. Clark v. Comm'r of Corrections, 917 A.2d 1, 24 (Conn. 2007) ("[A] person who, like the petitioner, leaves the demanding state involuntarily under government compulsion is a fugitive from justice subject to the mandatory provisions of the act."); People ex rel. Schank v. Gerace, 661 N.Y.S.2d 403, 407 (N.Y. App. Div. 1997) (irrelevant "whether his absence from the demanding State or presence in the asylum State is voluntary or involuntary"). In sum, "where one is convicted of [a] felony committed by him in one state, and he goes into another state, whether voluntarily or involuntarily, before serving the full term for which he was sentenced, he thereby becomes a fugitive from justice and subject to extradition."

[6] Perron argues that this court should reject the analysis of other jurisdictions because our statute refers to "escape," a term not used elsewhere. Mem. in Support of Compl. at 5-6. However, the court is not persuaded. Numerous other states use precisely the same language, requiring proof that the petitioner has "escaped from confinement." *See*, *e.g.*, Colo. Rev. Stat. § 16-19-114; Conn. Gen. Stat. Ann. § 54-169; Ga. Code Ann. § 17-13-33; 725 Ill. Comp. Stat. 225/13; Mass. Gen. Laws Ann. ch. 276 § 20A. Vermont's language in this regard is also identical to the model uniform statute. App. I Unif. Crim. Extradition Act § 13 (1936 Act), Arrest Prior to Requisition ("having been convicted of a crime in that state and having escaped from confinement").

Extradition: Mission or Motive of Defendant in Going to a State as Affecting Right to Extradite Him, 13 A.L.R. 415 (1921).

Perron is still a fugitive despite the fact that he was taken from New York to serve a federal sentence. *See, e.g.*, Thompson v. Nye, 257 P.2d 937, 938 (Kan. 1953) (Rejecting petitioner's "contention [that] he is not a 'fugitive from justice' because he did not 'flee from justice' from the state of Nebraska" because he was removed to serve a federal sentence). As another court explained,

> [Petitoner] argues that he cannot be considered a fugitive, since he was confined to prison during a large part of that time, and Rhode Island knew of his imprisonment. Nonetheless, whether his status for a period was as a prisoner or not, it is still true that the petitioner was absent from the State of Rhode Island following the commission of the crime, and hence a fugitive from justice as that term is understood.

People ex rel. Arnold, 223 N.Y.S.2d at 762. Although presented as a claim of waiver rather than a claim that the petitioner was not a fugitive, Vermont has similarly rejected a claim that New Hampshire "waived jurisdiction when it released him to Vermont at a time when New Hampshire charges were still pending." In re Roessel, 136 Vt. 324, 328–29 (1978).

The law is clear that despite the facial meaning of "fled" and "escape," those terms are not used so narrowly in the context of extradition. Intent to flee to avoid serving the sentence is not required.[7]

[7] One other point is worth noting: the New York warrant does not expressly state that Perron has not completed his sentence. In another case this could perhaps be a fatal flaw to extradition. In re LaPlante, 2014 VT 79, ¶¶ 7-11, 197 Vt. 189. However, Perron concedes that he has been in custody elsewhere since the time of the sentence, and that he has not served the New York sentence.

Jurisdiction

Perron also argues that New York's failure to retrieve him before his release from federal custody nullifies his fugitive status. Compl. ¶ 6. However, he cites no legal authority for this claim. The court concludes that New York had no obligation to secure him before his release. *See, e.g.*, People ex rel. Strachan v. Colon, 571 N.E.2d 65, 66 (N.Y. 1991) (forty-four-year delay between fugitive's departure from Florida and indictment for a crime committed there did not diminish his fugitive status); Keselica v. Wall, 2007 WL 2667973 * 7 (D. R.I. Mar. 20, 2007) (rejecting the argument that Virginia lost jurisdiction over petitioner in Rhode Island when Virginia returned petitioner's bond without requiring that he surrender himself).

Perron is being held at Marble Valley following a valid arrest. Perron's presence in this state, when he has not completed a sentence in another, makes him a fugitive as the term is used in the UCEA. Therefore, Perron is being lawfully held pending the issuance of a Governor's Warrant, and is not entitled to habeas relief.

ORDER

The plaintiff's petition for a Writ of Habeas Corpus is denied.

Electronically signed on February 28, 2017 at 04:15 PM pursuant to V.R.E.F. 7(d).

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Helen M. Toor
Superior Court Judge