

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-042

JUNE TERM, 2017

In re John Robert Large	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 403-8-16 Wrcv
		Trial Judge: Robert P. Gerety, Jr.

In the above-entitled cause, the Clerk will enter:

Petitioner appeals the superior court’s denial of his petition for a writ of habeas corpus. Petitioner argues that the extradition warrant was facially invalid and that he received ineffective assistance of habeas counsel. We dismiss petitioner’s appeal as moot.

Petitioner was arrested during the execution of a search warrant by Vermont State Police in Washington, Vermont on June 15, 2016. According to an affidavit submitted by the arresting officer, the arrest was based on information from Pennsylvania State Police that petitioner had been charged with several felonies in Pennsylvania for which arrest warrants had issued. Some of the Pennsylvania charges were based on acts committed in Pennsylvania and others were based on acts committed while petitioner was in Vermont. The affidavit established that several of the charges were punishable for terms in excess of one year. Petitioner was arraigned in Orange County Criminal Division. The court found that petitioner had fled from justice in Pennsylvania and ordered that he be held on bail of \$250,000.

On August 17, 2016, Pennsylvania’s Governor issued a requisition seeking petitioner’s extradition to Pennsylvania on the basis that petitioner had been charged with the crimes of terrorism, terroristic threats, and harassment, by intentionally committing acts while in Vermont or a third state that resulted in crimes in Pennsylvania. The requisition was supported by a criminal complaint, an affidavit of probable cause, and an affidavit of identification. On August 25, 2016, Vermont’s Governor issued the requested extradition warrant. However, it stated that petitioner had committed crimes in Pennsylvania and had “fled from justice in that State and taken refuge in” Vermont.

Petitioner filed his petition for a writ of habeas corpus in Windsor Civil Division on August 29, 2016.¹ He claimed that the State of Vermont failed to show that he was present in the demanding state at the time of the alleged crimes, as required by Vermont’s extradition statute, 13 V.S.A. § 4943. Petitioner was appointed counsel, who filed an amended petition arguing that the extradition documents did not support a finding of probable cause and therefore did not

¹ The petition was filed in Windsor County because petitioner was incarcerated at Southern State Correctional Facility in Springfield at that time.

“substantially charge” petitioner with the alleged crimes as required by § 4943. Neither the original nor the amended petition noted the inconsistency between the grounds stated for the requisition and the warrant.

The superior court denied petitioner’s request for release in a written decision issued in January 2017. It found that petitioner did not dispute that the documents submitted in support of the extradition request were facially in order, that he was the person named in the extradition request, that he had been charged with a crime in Pennsylvania, or that he was a fugitive. The court determined that a finding of probable cause was implied by the Pennsylvania magistrate’s issuance of the arrest warrant, and it declined to independently assess the merit of that finding. The court also ruled that the Pennsylvania requisition alleged that petitioner had committed the acts in Vermont so it was not necessary to show that he was in the demanding state at the time of the crimes. Petitioner appeals from the court’s decision.

When a person has fled from justice in another state to Vermont, Vermont’s Governor is required by the United States Constitution to comply with a valid extradition demand from that state. See U.S. Const. art. IV, § 2, cl. 2 (stating that persons charged with a felony in one state and 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”). Section 4943 of Title 13 sets forth the procedure for mandatory fugitive extraditions, including the requirement that the extradition demand must allege in writing “that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state.”

Extradition under the Constitution is not the only method of extradition, however. A separate provision of Vermont’s extradition statute provides that Vermont’s Governor may surrender a person to another state where the demand alleges that the person was charged in such other state “with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority makes the demand.” 13 V.S.A. § 4946. In such cases, the Governor has discretion whether to grant the request of the demanding state. In re Ropp, 149 Vt. 269, 271 (1988).

“A governor’s grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met.” Michigan v. Doran, 439 U.S. 282, 289 (1978). Once the governor has issued an extradition warrant, the habeas court may only consider “(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.” Id.

On appeal, petitioner argues that the August 2016 Governor’s Warrant was facially invalid because it purported to be based on a mandatory fugitive extradition demand, when the Governor in fact had discretion to refuse the demand. See Ropp, 149 Vt. at 271-72 (noting that extradition defendant may challenge warrant that incorrectly describes defendant as fugitive). He also argues that the Pennsylvania requisition failed to include a warrant or evidence of a judicial finding from Pennsylvania of probable cause, that the Pennsylvania affidavit did not establish probable cause, and that the Vermont Governor’s warrant is defective for various other reasons.

Assuming without deciding that petitioner properly preserved his arguments for appeal, we conclude that his challenge to the Governor’s warrant at issue is moot. Petitioner was served with a new Governor’s Warrant on May 22, 2017. The State represented at oral argument that the prior

Governor’s Warrant, which is the subject of this appeal, has been withdrawn and the State no longer relies upon it. The parties represented at argument that the validity of the new warrant, and the propriety of extradition on the basis of that warrant, are currently subjects of litigation in a separate proceeding in the trial court.

Petitioner argues that this action falls under the exception to the mootness doctrine for injuries that are likely to recur and will evade review. This exception applies if “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” In re Grievance of Vermont State Employees’ Ass’n, Inc., 2005 VT 135, ¶ 12, 179 Vt. 578, 581–82. There is no reasonable expectation that petitioner will find himself in the same action again, and we will not address a moot case merely because others may find themselves in a similar situation. Id.

We also reject petitioner’s argument that because, he claims, he has been unlawfully detained pursuant to the prior warrant, we should not dismiss this claim as moot. Extradition proceedings are intended to be summary and executive in nature; they are not criminal trials. In re Saunders, 138 Vt. 259, 264 (1980). “Thus, where it appears that an extradition warrant is otherwise valid, sound legal cause will exist for detention notwithstanding that there may have been a prior illegal arrest.” Id. Any irregularities in petitioner’s detention under the first warrant “are no bar to extradition” under the May 2017 warrant, which provides a legal basis for petitioner’s extradition. See In re Hval, 149 Vt. 58, 61 (1987). Petitioner’s challenge to his detention under the earlier warrant is a moot issue. Any challenges to the actual warrant upon which the State now relies remain to be addressed in the Superior Court in the first instance.

Petitioner’s motion in this Court for injunctive relief against the Department of Corrections, which related to the preparation of his supplemental brief,² is likewise moot.

Dismissed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

² Petitioner filed a supplemental brief that is over 100 pages long. Despite petitioner’s non-compliance with the word-count limits for briefs, see V.R.A.P. 32(a)(7), we have considered the arguments he sets forth in the brief, as well as the attached supplemental printed case.