

1986

# Joseph Russell Norton v. N. D. "Pete" Hayward : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JOSEPH RUSSELL NORTON, :  
 :  
Petitioner-Appellant :

860179

v. :

N. D. "PETE" HAYWARD, :  
Salt Lake County Sheriff :

Case No. 860179  
Priority No. 3

Defendant-Respondent

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BRIEF OF APPELLANT

Appeal from the denial of a Writ of Habeas Corpus  
action entered in the Third Judicial District in and for Salt  
Lake County, State of Utah the Honorable Timothy R. Hanson,  
Judge presiding.

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Salt Lake City, Utah 84111

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                  Petitioner-Appellant       :  
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                  v.                               :

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## STATEMENT OF ISSUES

1. Was the governor's warrant against Mr. Norton defective on its face? Should the trial court have presumed the documentation to be insufficient?
2. Has the extradition process denied the appellant due process of law?
3. Should the defective governor's warrant be set aside and the petitioner released from custody?
4. Is the petitioner precluded from litigating the legality of the extradition process because of his prior application for a writ of habeas corpus?

JOSEPH RUSSELL NORTON,  
Petitioner-Appellant  
v.

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Mr. Norton's extradition matter is before this Court for a second time. The Court's first consideration of this case was Notice of Appeal in the case of JOSEPH RUSSELL NORTON V. N. D. "PETE" HAYWARD, No. 20875 (Utah 1985). After the first appeal, Mr. Norton filed a subsequent pro se petition when he found some discrepancies between the charging documents in Colorado and the Governor's Warrant signed by the Governor in Utah which has been filed in the Fifth Circuit Court in and for Salt Lake County, State of Utah. In the second petition, the defendant contended that the Governor's Warrant of Extradition filed in Utah is defective and that he was not effectively represented by counsel at the first hearing. Judge Rigtrup denied the second petition, after a hearing held March 7, 1986. The petitioner then filed this appeal and the trial judge issued a stay of his extradition on the warrant pending the appeal.

## STATEMENT OF FACTS

Between November 16, 1982, and July 10, 1984, the appellant, Joseph Russell Norton, was incarcerated in the Utah State Prison. During that period, there was an outstanding warrant out of the State of Colorado for the arrest of the appellant. In December, 1984, almost five months after being released from prison and placed on parole, the appellant was arrested on the Colorado fugitive warrant. On February 7, 1985, a governor's warrant was issued on the Colorado charge. Thereafter, the appellant filed a Petition for Writ of Habeas Corpus alleging that the warden at the Utah State Prison failed to inform the appellant of the pending charge in Colorado thereby denying appellant the right to request a disposition under the Disposition of Detainers Against Prisoners Act, §77-29-1, et. seq., Utah Code Annotated (1953 as amended). The Writ was denied and an appeal to the Supreme Court affirmed that denial. (Norton v. Hayward, No. 20875).

After remand, the petitioner filed a Petition for Writ of Habeas Corpus or Coram Nobis. That matter came on for hearing on March 7, 1986, claiming that the governor's warrant is defective. At the March 7, 1986 hearing the petitioner, Joseph Russell Norton, testified that he was 73 years of age and at the time of the hearing, he had been jailed for 15 months from December 10, 1984. (Page 8) He testified that at the first Writ of Habeas Corpus hearing on February 20, 1985, he was represented by counsel and had not seen any of the



charging documents filed in the State of Colorado. (Page 10)  
He did not have an opportunity to see that documentation until  
he personally requested the documents from the State of  
Colorado District Attorney and the Salt Lake County Sheriff.  
(Page 11)

When he received the Colorado documents in relation to  
the Governor's Warrant issued in this case, he discovered that  
there were discrepancies in the two sets of documents. (Page  
13) The petitioner then filed the pro se filed petition for  
Habeas Corpus and coram nobis. (Page 15) He stated that prior  
to the first hearing, he specifically asked his prior attorney  
to give to him all of the legal documents from Colorado in  
contesting the Governor's Warrant and he was never shown any  
copies of the Documents. (Page 16)

After hearing, the Court entered the following  
Findings of Fact:

1. That the petitioner, Joseph Russell Norton, has  
been charged by complaint in the State of Colorado with the  
crime of Sexual Assault on a Child, and petitioner's  
extradition for this crime is sought by the Governor of the  
State of Colorado.

2. That petitioner has previously filed his  
application for a Writ of Habeas Corpus, which writ was denied  
by the District Court and which denial was sustained on appeal  
to the Utah Supreme Court.

3. That the issues of the prior writ application did not involve the issues here presented by the petitioner and that the findings therein are not applicable or controlling in the matter now before this Court.

4. That the petitioner has now placed in issue the following: (a) is petitioner the person charged in the complaint issued in the State of Colorado; (b) was petitioner present in the State of Colorado when the crimes charged were committed; (c) since four of the six counts set forth in the complaint filed by the State of Colorado names some other defendant, is the same, therefore, invalid thus denying jurisdiction to the State of Utah.

5. The Court finds from the evidence and testimony presented that the petitioner is the person named in the complaint filed by the State of Colorado and that petitioner was living in the State of Colorado at the times the crimes alleged were committed and that he is, therefore, a fugitive.

6. That the documents presented to the Governor of the State of Utah by the Governor of the State of Colorado in support of extradition of the petitioner are on file with the Secretary of State of the State of Utah and certified copies of the same were received by the Court.

7. That the Colorado extradition documents were not fatally defective upon their face because said documents only charge petitioner with a crime in two of its six counts. The Court further finds that Counts I and II of the Colorado Complaint clearly charge petitioner with crimes under Colorado law.

## SUMMARY OF ARGUMENTS

The petitioner is challenging the legal sufficiency of the documents filed in order to cause his detention and possible extradition. The petitioner is submitting that the documentation is inconsistent and clearly in error. Therefore, because the State did not prove a prima facia case of identity for extradition or that the underlying documents are in order, the petitioner's detention on an illegal Governor's Warrant is illegal and he should be ordered released.

### POINT I

THE GOVERNOR'S WARRANT PENDING AGAINST MR. NORTON IS DEFECTIVE ON ITS FACE AND THE TRIAL COURT SHOULD HAVE PRESUMED THE DOCUMENTATION TO BE INSUFFICIENT.

The mistakes which have occurred in the extradition process are apparent from a brief review of those documents.

First, the appellant refers to the Court's attention the Complaint/Information dated May 2, 1980. (Appendix Exhibit No. 1). That document contains six counts and only two of those counts, the first and second, are concerned with the petitioner. Those two counts deal with the sexual assault on a child. The other four counts concerning the Colorado criminal offenses of "patronizing prostitution of a child" and "kidnapping" are charged against "JAMES H. SCOTT" and do not involve the appellant in any manner.

The Warrant directing the Sheriff to deliver Mr. Norton to the custody of the Colorado authorities states as follows:

Whereas, it has been represented to me by the Governor of the State of Colorado that Joseph Russell Norton stands charged with the crime of sexual assault on a child, patronizing prostitution of a child, second degree kidnapping, criminal attempt patronizing prostitution of a child. Under the laws of said State, . . . (appendix Exhibit No. 2).

The Governor's Extradition Warrant is clearly mistaken in indicating that the petitioner stands charged in Colorado with the serious offenses. The Colorado charging document does not allege that Mr. Norton was a person that aided or abetted James Scott and sets forth no theory of accomplice liability.

Under the circumstances of his case, a prima facia showing of identity was not proven on the face of the documents as required in a hearing contesting extradition. Moore v. Simonet, 696 P.2d 823 (Colo. 1985). The petitioner testified that in light of the very broad allegations of the Colorado criminal action that it was difficult to determine whether he was the person that Colorado desired to extradite. (Page 14)

Therefore, the State without the prima facia showing of identity was unable to sustain the burden of holding and extraditing the appellant on the Governor's Warrant.

## POINT II

THE EXTRADITION PROCESS IN THIS CASE HAS DENIED  
THE APPELLANT DUE PROCESS OF LAW.

The substantial errors in the petitioner's case go back beyond the extradition documents to the original Information filed in Circuit Court in Salt Lake County charging the petitioner with being a fugitive from justice. In that document, the State of Utah authorities mistakenly charged that the alleged Colorado offenses took place on or about May 20, 1980. This date does not appear in any of the documents which were submitted to the Utah authorities to obtain the Governor's Warrant in any manner.

An issue concerning the entire process in this case is raised as to whether the Utah courts should allow extradition of the defendant because the fugitive Information obviously fails to state a criminal offense.

In Emig v. Hayward, 703 P.2d 1043 (Utah 1985), the Utah Supreme Court outlined several legal principals about fugitive matters which are applicable in this case. First, the Court recognized that due process rights apply to the extradition proceedings. Secondly, a Governor's Warrant, which carries a presumption of validity, supersedes and moots any defects in pre-warrant incarceration.

Any presumption of validity normally afforded to a Governor's Warrant should not apply in this case. The Warrant in this case is invalid on its face and therefore should be considered presumptively invalid. If the Warrant is invalid,

then the Court could only detain the petitioner on the basis of the fugitive Information and the fugitive Information has expired and contains a defective date of any alleged offense.

The petitioner also submits that his due process rights have been violated in this matter. The petitioner has been detained since December, 1984 without any serious inquiry into the validity of the underlying documents. The combination of defects is indicative of a clear violation of due process concerning the detention of a person.

In cases such as these, it appears that the State, as well as the defendant, has a duty to bring the defects to the attention of the Court. Utah Code Annotated §77-30-4 states:

§77-30-4. Governor may investigate demand. When a demand shall be made upon the governor of this State by the executive authority of another state for the surrender of a person so charged with a crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

A review of the record in this case should cause the Court to find that the defendant has been denied due process and the State of Utah and the executive department have failed in their duty to properly investigate this matter before enclosing a warrant.

Therefore, the Court should reverse the ruling of the lower court finding that the petitioner's due process rights were not violated. The defective procedure in this case

requires that the defendant should be released from custody and the warrant and fugitive complaint dismissed.

### POINT III

THE GOVERNOR'S WARRANT IS DEFECTIVE AND SHOULD BE SET ASIDE AND THE PETITIONER RELEASED FROM CUSTODY.

In Langley v. Hayward, 656 P.2d 1020 (Utah 1982), the Utah Supreme Court indicated that when the documents or testimony at the Habeas Corpus hearing on extradition the incarcerated person is entitled to be released. In footnote number one of that opinion the Court defined the issues which if decided in favor of the Petitioner would require release citing the United States Supreme Court decision in Michigan v. Doran, 439 U.S. 289. The quoted language is as follows:

Once the governor has granted extradition, a court considering release on habeas corpus can do no more than 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.

In Mr. Norton's case, the extradition documents on their face are not in order. Therefore papers are documents which allow the authorities to detain a person and cause him to be transferred to another state. This Court should require that these crucial documents should not be as poorly drafted as those which have detained Mr. Norton in the Salt Lake County Jail and will cause further detention.

As set forth in Point I, the presumption of identity did not occur in this case due to the defects. After that, the State of Utah did not go forward to any introduction of photographs, physical descriptions, or other identifying information. See Emig v. Hayward, supra.

Because the State did not meet that burden, the trial court erred in denying the petitioner's request for release.

#### POINT IV

THE PETITIONER IS NOT PRECLUDED FROM LITIGATING  
THE LEGALITY OF THE EXTRADITION PROCESS  
BECAUSE OF HIS PRIOR APPLICATION FOR WRIT OF  
HABEAS CORPUS.

Even though the trial judge did not grant the Motion to Dismiss, the petitioner anticipates that the respondent will argue that Mr. Norton's first application in some manner bars the subsequent petition.

However, the petitioner submits that on any of the following reasons, the Court should not find that such a bar exists.

1. The petitioner is pursuing a statutory remedy which specifically provides for the use of a Writ of Habeas Corpus to test the legality of the extradition process. Utah Code Annotated §77-30-1 et. seq. (1953 as amended).

2. The transcript of the prior hearing proves that the petitioner or his counsel did not present or argue any issue concerning the deficiencies of the documentation.

3. The petitioner did not discover the discrepancies until after the hearing.

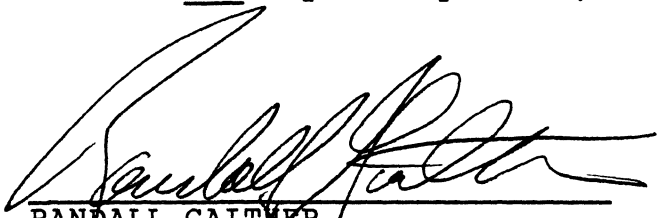


4. The petitioner's prior counsel should have discovered the problem with the documentation and to preserve a waiver from prior counsel's inability to review the extradition documentation would deny the petitioner the Constitutional rights to effective assistance of counsel.

#### CONCLUSION

The petitioner submits that the documentation submitted to require the petitioners extradition is insufficient and the State failed to prove identity in the absence of a prima facie case of identity. Therefore the Court should reverse the trial court's ruling and order the petitioner released.

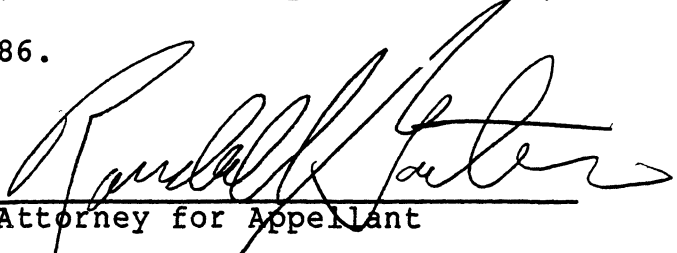
Respectfully submitted this \_\_\_\_ day of September, 1986.



RANDALL GAITNER  
Attorney for Appellant

#### DELIVERY CERTIFICATE

I hereby certify that four copies of the above Appellant's Brief will be delivered to the County Attorney's Office, 231 East Fourth South, Salt Lake City, Utah 84111, this \_\_\_\_ day of September, 1986.



Attorney for Appellant

Delivered by \_\_\_\_\_ this \_\_\_\_ day of September, 1986.