

1986

Joseph Russell Norton v. N. D. "Pete" Hayward, Salt Lake County Sheriff : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Norton v. Hayward*, No. 198620875.00 (Utah Supreme Court, 1986).
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JOSEPH RUSSELL NORTON, :

Petitioner-Appellant, :

-v- : Case No. 20875

N. D. "PETE" HAYWARD, :

Salt Lake County Sheriff, :

Respondent. :

APPEAL FROM THE JUDGMENT AND ORDER OF
DISMISSAL OF APPELLANT'S PETITION FOR
A WRIT OF HABEAS CORPUS CHALLENGING
EXTRADITION PROCEEDINGS RENDERED IN THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE LEONARD H. RUSSON, PRESIDING.

Attorneys for Respondent

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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Petitioner-Appellant,	:	
-v-	:	Case No. 20875
N. D. "PETE" HAYWARD,	:	
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BRIEF OF RESPONDENT

- - - - -

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether Petitioner's petition for habeas corpus relief filed pursuant to Section 10 of the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-10 (1982), raised any issues which are justiciable in such proceedings.

2. Whether Colorado's failure to lodge a detainer against petitioner when he was incarcerated in the Utah State Prison bars Colorado from later seeking his extradition after petitioner's release from prison.

3. Whether petitioner's present confinement in the Salt Lake County jail pending resolution of his challenge to extradition is lawful.

IN THE SUPREME COURT OF THE STATE OF UTAH

JOSEPH RUSSELL NORTON,	:	
Petitioner-Appellant,	:	
-v-	:	Case No. 20875
N. D. "PETE" HAYWARD,	:	
Salt Lake County Sheriff,	:	
Respondent.	:	

BRIEF OF RESPONDENT

- - - - -

STATEMENT OF THE CASE

The State of Colorado is seeking the extradition of petitioner, Joseph Russell Norton, for crimes he is charged with committing in that state. Petitioner, a Utah parolee, was arrested in the State of Utah as a fugitive from justice from Colorado. Petitioner challenged the extradition by way of a habeas corpus action filed pursuant to provisions of the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-10 (1982) in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Leonard H. Russon, presiding. Judge Russon denied habeas corpus relief.

STATEMENT OF FACTS

Petitioner was incarcerated in the Utah State Prison from November 16, 1982 until July 10, 1984 for crimes he committed in Utah (District Court Record No. C85-1298, hereinafter referred to as R. at 22). Approximately five months after his release from prison on parole, petitioner was arrested

in Utah as a fugitive from justice having been charged by complaint in Colorado with the crime of sexual assault (R. 6). On February 7, 1985, Utah's Governor issued a Governor's Warrant authorizing Utah officials to deliver petitioner to authorized Colorado agents for return to Colorado (R. 22, 23).

After issuance of the Governor's Warrant, petitioner filed a petition for a writ of habeas corpus pursuant to the provisions of the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-10 (1982). This petition came on for hearing before the Honorable Judge Leonard Russon on March 12, 1985 (R. 4, 5). At the hearing, petitioner did not dispute that he is the person charged and sought for extradition by Colorado or is the person named in the Governor's Warrant. Nor did he place in issue whether he was in Colorado when the crime was committed or whether the charge constitutes a crime under the laws of Colorado. He also did not challenge the facial legal sufficiency of Colorado's extradition documents. His sole contentions were (1) that the warden of the Utah State Prison did not inform him there were Colorado charges pending, and (2) that Colorado's failure to lodge a detainer against him when he was previously incarcerated in the Utah State Prison violated the intent of the Interstate Agreement on Detainers, Utah Code Ann. § 77-29-5 (1982), and should now bar his extradition to Colorado (R. 20-22).

The district court denied habeas corpus relief (R. 6, 7).

SUMMARY OF ARGUMENT

The lower court properly denied petitioner's petition for a writ of habeas corpus because petitioner failed to raise any issues that were justiciable in such proceedings under the terms of the Uniform Criminal Extradition Act relating to habeas corpus review of extradition matters.

Alternatively, Colorado has properly sought petitioner's extradition now that he has been released on parole. Utah law and the Interstate Agreement on Detainers do not require Colorado to lodge a detainer against petitioner in order to secure his later return to Colorado to face charges pending there or as a prerequisite for extradition. Because Colorado did not lodge a detainer against petitioner, petitioner has no rights under the Interstate Agreement on Detainers and Colorado is free to extradite him.

Finally, petitioner is properly confined in the county jail pursuant to the Uniform Criminal Extradition Act, which requires a fugitive's confinement after issuance of a Governor's Warrant.

ARGUMENT

POINT I

PETITIONER'S PETITION FOR HABEAS CORPUS
RELIEF FILED UNDER THE UNIFORM CRIMINAL
EXTRADITION ACT, UTAH CODE ANN. § 77-30-10
(1982) WAS PROPERLY DENIED BECAUSE
PETITIONER FAILED TO RAISE ANY ISSUE
WHICH IS JUSTICIABLE IN SUCH PROCEEDINGS.

Extradition in this country is governed strictly by the terms and proceedings of Article IV, Section 2 of the United States Constitution, 18 U.S.C. § 3182 (1978) (which provides a

limited process for extradition), and by the Uniform Criminal Extradition Act, codified in Utah Code Ann. § 77-30-1 et seq. (1982). While the federal Constitution authorizes extradition, it fails to provide procedures to accomplish one. Thus, the federal statute was promulgated, and the States, to the extent they do not enact procedures in conflict with the federal authority, are authorized to agree to a set of uniform procedures for extradition. Thus, the Uniform Act has been enacted in virtually all of the states. Once enacted, its terms and conditions are binding on the States party thereto. Michigan v. Doran, 439 U.S. 282 (1978).

The Uniform Act expressly allows a fugitive to challenge his extradition, but only under a set of orderly procedures authorized by law. Once arrested on a Governor's warrant, and prior to final return to the demanding State, Section 10 of the Uniform Act accords a fugitive the right to challenge his extradition by way of habeas corpus review. Utah Code Ann. § 77-30-10 (1982), provides as follows:

No person arrested upon such [governor's] warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing thereon shall be given to the

prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

It is under this provision that petitioner filed the instant action.

The United States Supreme Court has held that the issues which may be litigated in these specialized extradition habeas corpus proceedings are strictly limited to (1) whether the extradition documents on their face are in order, (2) whether the petitioner has been charged with a crime in the demanding state, (3) whether the petitioner is the person named in the extradition request, and (4) whether the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 289 (1978). See also Burnham v. Hayward, 663 P.2d 65, 67 (Utah 1983); and Langley v. Hayward, 656 P.2d 1020, 1022 n. 1 (Utah 1982). Petitioner did not assert any of these issues in the habeas corpus proceedings below. Rather, he claimed that the warden of the Utah State Prison should have advised him of Colorado's charges when petitioner was incarcerated in the prison that Colorado's earlier failure to lodge a detainer with the prison should bar Colorado's later demand for extradition now that petitioner has been released on parole from his incarceration in the Utah State Prison; and that his incarceration in the Salt Lake County Jail awaiting resolution of the extradition constitutes cruel and unusual punishment. None of these issues fall under any of the four proper habeas corpus issues identified in Doran. Accordingly, habeas corpus relief was properly denied by the district court.

POINT II

PETITIONER'S EXTRADITION TO
COLORADO IS NOT BARRED BY COLORADO'S
PRIOR FAILURE TO LODGE A DETAINER
AGAINST HIM WHEN HE WAS INCARCERATED
IN THE UTAH STATE PRISON.

Assuming arguendo that petitioner's claims were justiciable in habeas corpus proceedings which are filed under Section 10 of the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-10 (1982), the issues lack merit and were properly rejected by the lower court.

Petitioner's contention that Colorado's extradition request is barred by Colorado's failure to earlier proceed under the Interstate Agreement on Detainers (IAD), Utah Code Ann. § 77-29-5 (1982),¹ is clearly without merit. The IAD does not legally obligate a State which has charges pending to lodge a detainer with an institution in which the defendant might be incarcerated. Various provisions of the IAD clearly limit the applicability of the Act solely to situations where a State has untried charges pending and has lodged a detainer against the prisoner. Article III reads in pertinent part:

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a

¹ Petitioner's Brief incorrectly refers to Utah Code Ann. § 77-29-1 (1982), which applies only when there are Utah charges pending against a Utah prisoner, instead of Utah Code Ann. § 77-29-5 (1982), which applies when a second state has charges pending against a Utah prisoner. See Petitioner's Brief at 4, 5.

detainer has been lodged against the prisoner. . . .

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him. . . .

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all [charges] on the basis of which detainers have been lodged against the prisoner. . . .

(emphasis added). Article IV reads in pertinent part:

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) [for trial]. . . .

(b) . . . authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates. . . .

(emphasis added). See also Articles I, V(b)(2), V(c), V(d) for similar limiting provisions. The IAD clearly does not legally require a State, seeking to prosecute a person serving time in another state, to lodge a detainer. A State may choose to proceed either under the IAD or under the Uniform Criminal Extradition Act. See Hystad v. Rhay, 12 Wash. App. 872, 533 P.2d 409 (1975). A prisoner's rights under the IAD do not arise until after a detainer has been lodged. United States v. Mauro, 436 U.S. 340 (1978); State v. Coffman, 59 Or. App. 18, 650 P.2d 144 (1982); State v. Newman, 117 R.I. 354, 367 A.2d 200 (1976). Thus, the

lower court properly found that "where a detainer was not lodged by the demanding State of Colorado, there was no obligation to notify the petitioner of the outstanding charges" (R. 7).

In the instant case, it is undisputed that Colorado never lodged a detainer against petitioner (R. 20, 21). See Petitioner's Brief at p. 5. There is only petitioner's unsupported allegation to suggest that Colorado officials even knew of petitioner's whereabouts during his incarceration in the Utah State Prison (R. 23). Instead of lodging a detainer against petitioner, Colorado properly complied with the requirements of the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-1 et seq. (1982), to obtain his rendition. Because petitioner had been released from the Utah State Prison on his Utah conviction, Colorado's decision to extradite, rather than to earlier lodge a detainer against him did not frustrate the IAD's rehabilitative purposes.

Accordingly, Colorado's failure to lodge a detainer against petitioner when he was incarcerated in the Utah State Prison does not bar his later extradition to Colorado. Habeas corpus relief was thus properly denied on this issue.

POINT III

PETITIONER'S PRESENT CONFINEMENT IN THE
SALT LAKE COUNTY JAIL AWAITING EXTRADITION
TO COLORADO IS LAWFUL.

There is nothing in the record to support petitioner's claim that his confinement in the county jail pending the final outcome of his habeas corpus challenge to Colorado's extradition constitutes cruel and unusual punishment or is otherwise

unconstitutional, nor does appellant explain how his confinement allegedly violates his constitutional rights. He is properly and constitutionally incarcerated due to the issuance of the Utah Governor's warrant. Under the Uniform Criminal Extradition Act, a fugitive is not entitled to bail once the Governor's warrant issues. Emig v. Hayward, 703 P.2d 1043, 1049 (Utah 1985). Petitioner's relief from confinement is to seek release on bail in Colorado after extradition. See Emig at 1050.

CONCLUSION

Based upon the foregoing, petitioner's petition for habeas corpus relief was properly denied. He should be ordered extradited to Colorado forthwith.

DATED this 2nd day of January, 1986.

DAVID L. WILKINSON
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CERTIFICATE OF MAILING

I hereby certify that I mailed four true and exact copies of the foregoing brief, postage prepaid, to Kerry P. Eagan, attorney for appellant, Salt Lake Legal Defender Association, 333 South Second East, Salt Lake City, Utah 84111, this 2nd day of January, 1986.

