

1960

Gordon S. Little v. George Beckstead : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Clark & Clark; Attorneys for Plaintiff and Appellant;

Recommended Citation

Brief of Appellant, *Little v. Beckstead*, No. 9216 (Utah Supreme Court, 1960).
https://digitalcommons.law.byu.edu/uofu_sc1/3617

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

FILED

MAY 1960

GORDON S. LITTLE

Clerk, Supreme Court, Utah

Plaintiff and Appellant :

Case

vs.

:

No. 9216

GEORGE BECKSTEAD, Sheriff of
Salt Lake County :

Defendant and Respondent :

APPELLANT'S BRIEF

CLARK & CLARK

Attorneys for Plaintiff
and Appellant

TABLE OF CONTENTS

	Page
NATURE OF THE CASE.	1
STATEMENT OF FACTS.	2
ARGUMENT: COURT ERRED IN DENYING TO APPELLANT THE RIGHT TO TEST THE LEGALITY OF HIS ARREST IN A HABEAS CORPUS PROCEEDING	3
CONCLUSION.	6

STATUTES CITED

	Page
77-56-3 Utah Code Annotated 1953. . . .	3
77-56-10 Utah Code Annotated 1953. . .	5

IN THE SUPREME COURT OF
THE STATE OF UTAH

GORDON S. LITTLE, :
Plaintiff and Appellant, :
vs. :
GEORGE BECKSTEAD, Sheriff of :
Salt Lake County, :
Defendant and Respondent. :

Case

No.

the State

APPELLANT'S BRIEF

NATURE OF THE CASE

This is an appeal from the lower court's holding that a person sought to be extradited does not have the right to challenge the legal sufficiency of the extradition proceedings. The only issue on appeal is one of law, i.e., whether

Section 77-56-10, U.C.A. (1953) authorizes a person, in a habeas corpus proceeding, to challenge the legal sufficiency of the extradition proceedings.

STATEMENT OF FACTS

Gordon S. Little, the appellant herein, was incarcerated in the Utah State Prison and remained there until released by the Board of Pardons on the 19th day of January, 1960. Appellant was then transferred to the Salt Lake County Jail under a warrant of arrest signed by the Governor of the State of Utah for extradition to the State of Oregon.

Pursuant to Section 77-56-10, U.C.A. (1953) the appellant filed for a writ of habeas corpus and a hearing thereon was held on February 8, 1960.

At the hearing the lower court held that the defendant could only challenge (1) was this the person charged; (2) was he in Oregon at the time of the alleged commission of the crime; and (3) had he fled therefrom (R.7 Line 4-6). The court further held that he could not test the

legal sufficiency of the extradition proceedings.

From this holding the defendant has appealed.

here, I ARGUMENT:

COURT ERRED IN DENYING TO APPELLANT THE RIGHT TO TEST THE LEGALITY OF HIS ARREST IN A HABEAS CORPUS PROCEEDING.

The extradition of a person from the State of Utah to another state is a creature of statute. The form of demand, the affidavits required, the warrant of arrest, the time to apply for habeas corpus, the action required by the governor, etc., are all subject to the provisions of this Uniform Criminal Extradition Act. The Act specifically provides that: "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 77-56-6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by

affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence composed in execution, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand." Section 77-56-3 U.C.A. (1953)

If the governor decides that the demand should be complied with he then signs a warrant substantially reciting the facts necessary to the validity of its issuance. Such warrant authorizes the peace officer, or a person so directed, to

arrest the accused for delivery to the authorized agent of the demanding state.

However, the Statute provides that "No person arrested upon such 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." Section 77-56-10 U.C.A. (1953)

At the hearing set for appellant the lower court did not allow the appellant to challenge whether the statutory requirements had been satisfied, but limited the proceedings to a determination as to whether he was the person charged, whether he was in Oregon at the time of the alleged commission of the crime, and had he fled therefrom. By such a limitation the lower court committed error by denying appellant a right expressly granted under the statute to test the legality of his arrest. The lower court's decision should be reversed to grant to appellant a hearing which accords with the statutory requirements.

CONCLUSION

The legal argument presented in this brief can be summarized, simply, in a syllogistic form:

(A) Section 77-56-10, U.C.A. (1953) provides that no defendant shall be extradited until he be given the right to request and obtain a hearing to test the legality of his arrest;

(B) The lower court denied defendant the right to challenge the legality of his arrest;

(C) Therefore, the lower court committed error, and its decision should be reversed to grant to appellant a hearing which accords with the statutory requirements.

Respectfully submitted,

CLARK & CLARK

By

Calvin E. Clark
1006 Deseret Building
Salt Lake City, Utah