

1962

# Willie Olen Scott v. George Beckstead : Brief of Respondent

Utah Supreme Court

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## Recommended Citation

Brief of Respondent, *Scott v. Beckstead*, No. 9575 (Utah Supreme Court, 1962).  
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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

**ED**  
10 1962

WILLIE OLEN SCOTT, Clerk. St.  
*Plaintiff Appellant,*

Court, Utah

vs.

Case No.  
9575

GEORGE BECKSTEAD,  
Sheriff of Salt Lake County,  
State of Utah,  
*Defendant Respondent.*

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**BRIEF OF RESPONDENT**

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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WILLIE OLEN SCOTT,  
*Plaintiff Appellant,*

vs.

GEORGE BECKSTEAD,  
Sheriff of Salt Lake County,  
State of Utah,  
*Defendant Respondent.*

Case No.  
9575

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BRIEF OF RESPONDENT

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STATEMENT OF FACTS

Parties will be referred to as they appear in the lower court.

The statement of the case in Appellant's Brief is correct as to the facts therein recited but defendant believes these additional facts have a bearing on the case:

Plaintiff was incarcerated in the Utah State Prison and a 'hold' was placed upon him by the State of Tennessee. On July 26, 1961, the Sheriff of Memphis, Tennessee was advised that plaintiff was to be released from the Utah State Prison on September 12, 1961. (Exhibit 1) Upon receipt of this information the State of Tennessee initiated extradition proceedings, thereupon plaintiff was transferred to the custody of the defendant to hold for the State of Tennessee. A governor's warrant was subsequently issued by the State of Utah. (Exhibit 2). Plaintiff filed a Writ of Habeas Corpus contesting the validity of the extradition. (R1-2). The Third District Court denied the Writ of Habeas Corpus and it is the entry of the order denying the Writ that that is the subject of this appeal.

## STATEMENT OF POINTS

### POINT I

THE TRIAL COURT DID NOT ERR IN DENYING THE WRIT OF HABEAS CORPUS PETITIONED FOR BY PLAINTIFF.

## ARGUMENT

### POINT I

THE TRIAL COURT DID NOT ERR IN DENYING THE WRIT OF HABEAS CORPUS PETITIONED FOR BY PLAINTIFF.

The Petition of Writ of Habeas Corpus filed by plaintiff alleged two separate grounds as the basis for the issuance of the writ. The first ground alleged an illegal restraint because plaintiff had not received a hearing by the Governor of the State of Utah prior to the issuance of the governor's warrant. The second ground contested the validity of the extradition proceeding as provided by Title 77, Chapter 56, Section 10, UCA 1953. At the hearing on the Writ plaintiff abandoned his first ground and proceeded to contest the validity of the extradition proceeding.

The Writ of Habeas Corpus was issued and defendant appeared at the hearing. The defendant introduced into evidence the rendition papers from the State of Tennessee. (Exhibit 1). The defendant then introduced into evidence the warrant issued by the Governor of the State of Utah. (Exhibit 2). The defendant rested. The plaintiff then gave an unsworn statement wherein he testified that he had never been known as William O. Scott but that his name was Willie Olen Scott. The plaintiff then introduced evidence pertaining to his alleged whereabouts at the time of the crime committed in the State of Tennessee. (Exhibit 3). At the conclusion of this evidence both parties rested and the Court denied the issuance of the Writ.

Under Point I of this brief plaintiff argues two definite and distinct points which he contends constituted error by the Court in denying the Writ of Habeas Corpus. The first point claims that if the issue of identity is

raised in the extradition proceeding, the State has the burden of introducing evidence to prove the identity of the person to be extradited. The defendant does not disagree with this principal or the rulings of the cases cited by the plaintiff, but defendant submits this argument is not material to the case at bar since the plaintiff failed in the first instance to raise the question of identity at the hearing, i. e., at no point did plaintiff contend he was not the person charged with the crime of robbery by the State of Tennessee and wanted by that State.

The defendant respectfully submits that even if the record warrants a finding that the question of identity was put in issue by the plaintiff, it is a well-accepted principal of law that in an extradition proceeding the introduction into evidence of the rendition documents establishes a *prima facie* case regarding the identity of the accused.

In the case of *Gillis vs. Leekley* 38 Wash. 156, 80 Pac. 300, an appeal was taken from an order quashing a Writ of Habeas Corpus in an extradition proceeding. The person to be extradited in that case contended that the evidence failed to establish his identity. The court in overruling this contention stated as follows:

“The first point urged on the appeal is that the respondent failed to establish the identity of the appellant as the person accused of crime, and named in the rendition warrant. This position is untenable, for two reasons. First, because the identity of the appellant as the person named in the warrant was not put in issue by the plead-

ings. The petition for the writ simply averred that the petitioner was not guilty of the offense charged. With this question the courts of this state have no concern. The petition utterly failed to allege that the appellant was not the person charged with the commission of the offense, and named in the extradition warrant. Second, the warrant is prima facie evidence of the existence of every fact which the executive must determine before issuing the warrant. The warrant in this case is in due form, and is therefore prima facie evidence that a proper demand was made upon the executive of this state, that the appellant is the person charged with the commission of crime, and that he is a fugitive from justice. The burden of proof was upon the appellant to disprove these facts, or to overthrow the presumption which arose from the production of the warrant itself. This he failed to do." (300)

See also 84 ALR 337. *Ryan vs. Rogers* 21 Wyo. 311; 132 Pac. 95.

The defendant respectfully submits that having established a prima facie case the burden then shifted to the plaintiff to prove by a preponderance of the evidence that he was not the person to be extradited to the State of Tennessee. This plaintiff failed to do.

In the instant case the only evidence introduced by plaintiff was an unsworn statement to the effect that he was never known as William O. Scott. (R-14, 16). The plaintiff did admit that his name was Willie Olen Scott. (R-14, 16). This constitutes the entire evidence introduced by plaintiff concerning identity. We submit that this evidence does not sustain the burden placed on



plaintiff to overcome the presumption of the identity raised by the rendition papers.

The second point raised by plaintiff under Point I of his argument is to the effect that the rendition documents are invalid because of the discrepancy in the Christian names and middle names of Mr. Scott. Plaintiff suggests that the discrepancy defeats the validity of said documents and contends that the writ should have been granted and the plaintiff discharged.

Defendant submits that the Christian names used in the rendition papers and the initial 'O' in some instances rather than the name 'Olen' does not defeat the validity of the documents. Moreover, the discrepancy in the Christian and middle names is immaterial since the surname of Scott is used uniformly. The plaintiff never suggests that he is in fact not the identical person indicted by the State of Tennessee but only complains of the discrepancy in the Christian name which, defendant suggests, is merely the result of a clerical error and is in no way prejudicial to the plaintiff.

Moreover, defendant further submits that the rule of *idem sonans* is applicable in this instance in that the name 'Willie' and 'William' are similar. The legal theory of *idem sonans* was discussed in the case of *State vs. Hattaway*, 180 La. 12, 156 So. 159, where a defendant was convicted of a crime and alleged error on the part of the State in failing to subpoena his witness. The defendant in this case requested the subpoena of a witness by the name of *Harvey Alford* and the clerk inadvertently is-

sued the subpoena for *H. Afford*. The court in affirming the conviction stated the following: 159-161.

“ . . . The correct name of the witness wanted, it seems, was Harvey Alford, and the clerk wrote the name on the witness book and issued the subpoena for H. Afford. But the subpoena was served by the sheriff on H. Alford, who was the witness wanted, so that the defendant got service on the witness desired. But that person failed to appear on the day set for trial, for what reason we are not informed, but presumably because his name was incorrectly spelled. The names Afford and Alford when written out have a similar appearance, and when pronounced they sound alike. The rule of ‘idem sonans’ finds application in a case like this.

“The rule of ‘idem sonans’ is that absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal; that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient designation of the individual referred to, and no advantage can be taken of the clerical error.”

The defendant respectfully submits that in applying the rule announced in the foregoing citation it is to be observed that the name ‘William’ and ‘Willie’ when pronounced according to the commonly accepted methods are very similar in sound. Moreover, it is of common knowledge that the name Willie is a contrac-

tion of the name William. The plaintiff admits in his Brief that the theory of *idem sonans* is an accepted principal of law and further admits that mere clerical mistakes of spelling and mere discrepancies of names appearing in the extradition papers or warrant will not defeat rendition provided there is sufficient testimony to identify the accused as the person accused in such papers. (P-11-12)

The defendant submits that the record sets forth sufficient testimony by the plaintiff to meet this burden. The petition for Writ of Habeas Corpus is in the name of Willie Olen Scott; the warrant of arrest issued by the State of Tennessee and admitted in evidence in this case requested the arrest of one Willie Olen Scott. The plaintiff testified his name is Willie Olen Scott. (R-14)

We submit that under this testimony and evidence there can be no question but that the person sought by the State of Tennessee was the person who appeared before the trial court and that the rendition documents introduced into evidence are valid.

With respect to plaintiff's argument in Point II of his brief that the plaintiff's evidence clearly and convincingly proved that the plaintiff was not a fugitive from the State of Tennessee, the laws are basic on the point that the plaintiff's evidence must be overwhelming for the asylum state to refuse rendition to the requesting state. It is submitted by defendant that the receipt into evidence of plaintiff's Exhibit 3 may be evidence of alibi to be aired at the time of trial in the State of Tennessee,

but that it is not sufficient to show that the plaintiff is not a fugitive from justice from the demanding state. The alleged fugitive may, of course, deny the jurisdictional fact that he is a fugitive from justice or that he was personally present in the demanding State at the time when the crime is charged to have been committed. (See Scott on Rendition, Section 52). Yet the burden is on him to overthrow conclusively the presumption raised against him by the rendition papers which presumption "... is not overthrown by the mere fact that, upon the point of *presence vel non* of the accused in the demanding state when the crime was committed the evidence is contradictory." (*Ex Parte Pelenski*, 213 S.W. 809-810)

The plaintiff admitted having been in the State of Tennessee with one Oliver Townsend, a co-defendant in the grand jury indictment charging plaintiff and Townsend with the Crime of Robbery. (R-15). Defendant submits that this admission coupled with the presumption arising from the rendition papers that the plaintiff is a fugitive is sufficient to require the trial court to deny plaintiff's writ.

A Habeas Corpus proceeding to test the validity of an extradition proceeding is summary rather than plenary, and in accord with the well established general principal that a Writ of Habeas Corpus should not be used to test the sufficiency of evidence upon which the charge may have been based. (*Harris vs. Burbidge*, 58 U. 392, 199 P 662). The Court, therefore, is not required upon petition for Writ of Habeas Corpus in an

extradition proceeding to make a ruling on the issue of the existence of the plaintiff in the demanding state when the crime was committed where the evidence is merely contradictory and is not sufficient to meet the overwhelming burden of proof placed on the plaintiff that would require discharge of the plaintiff on the basis that he is not a fugitive.

“ . . . the Court will not discharge a defendant arrested under the Governor’s warrant where there is merely contradictory evidence on the subject of presence in or absence from the state . . . ” (*Munsey vs. Clough*, 196 US 364, 49 L. ed. 515. See also 51 ALR 797 “Right to Prove Absence from Demanding State or Alibi on Habeas Corpus in Extradition Proceedings.” and cases therein cited.)

## CONCLUSION

The Defendant respectfully submits that the documents introduced in this case meet with the requirements of the extradition statutes of the State of Utah. The Defendant further contends that the evidence introduced in this case sustains the ruling by the Trial Court in dismissed plaintiff’s Writ of Habeas Corpus.

The Defendant further contends that in the event the Court should determine that if either the documents introduced in evidence or the testimony at the hearing was insufficient to properly protect the legal rights of the plaintiff in this action, that the matter should be re-

manded to the District Court for further evidence. Defendant contends that to reverse the ruling of the Trial Court and grant plaintiff's Writ of Habeas Corpus would greatly interfere with the due administration of justice under Federal and State legislation on interstate rendition of fugitives.

Respectfully submitted,

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