

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

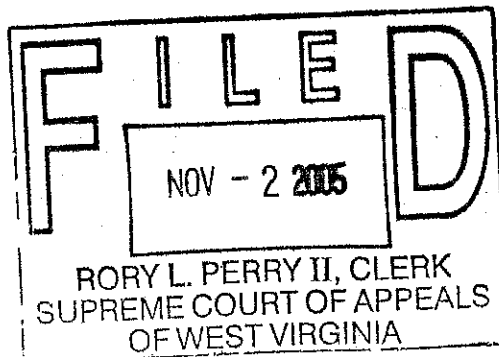
STATE OF WEST VIRGINIA ex el.
STATE OF WEST VIRGINIA
Petitioner

V.

DOCKET NO.

HONORABLE DAVID H. SANDERS,
Circuit Judge, 23rd Judicial Circuit and
JASON ERIC VAN METRE,
Respondents

**RESPONDENT VAN METRE'S OPPOSITION TO STATE'S
PETITION FOR PROHIBITION AND STAY**



John P. Adams
Public Defender
State Bar 4967
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Martinsburg, WV 25401
304-263-8909

I. KIND OF PROCEEDING AND NATURE OF THE RULING BELOW.

In this case, the State seeks the continued incarceration in West Virginia of the Respondent, Eric Van Metre, until such time as the criminal proceedings pending against him in West Virginia are concluded, notwithstanding the fact that the Respondent has already made bond on all West Virginia charges. Mr. Van Metre is only incarcerated at this time because of a detainer and/or fugitive warrant filed on him by the Commonwealth of Virginia alleging unrelated felony offenses.

Upon inquiry in Circuit Court, and after consultation with counsel, the Respondent advised the Court that he wished to waive formal extradition proceedings and wanted to return to Virginia to resolve the charges against him. Of particular concern to the Respondent was the fact that his current incarceration constitutes "dead time" for which he will not receive credit against any possible sentence in either West Virginia or Virginia.¹

The State opposes permitting Mr. Van Metre to return to Virginia under two different rationales. The first is that the State has a right under West Virginia Code 5-1-9(j) to refuse to return him to Virginia until trial, and presumably sentencing, are complete in West Virginia. The second is that the State would be somehow prejudiced in fulfilling its obligation to the Respondent for a speedy trial pursuant to West Virginia Code 62-3-21, commonly known as the "Three Term Rule."

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He cannot receive credit in West Virginia because he has been admitted to bond; he cannot receive credit in Virginia because he is in West Virginia.

On October 31, 2005, the Circuit Court of Berkeley County (Sanders, Judge) ruled that the Respondent should be permitted to waive formal extradition proceedings and return to Virginia. The Circuit Court's Order was stayed until 5:00pm November 3, 2005 to permit the State to seek intervention by this Court.

II STATEMENT OF FACTS

The Respondent does not dispute the Statement of Facts set forth by the Petitioner.

III AUTHORITIES RELIED UPON

United States Constitution, 5th Amend.

United States Constitution, 6th Amend.

United States Constitution, 14th Amend.

West Virginia Constitution, Article III, Section 4.

West Virginia Constitution, Article III Section 10 .

West Virginia Constitution, Article III, Section 20

West Virginia Code 5-1-7

West Virginia Code 5-1-9(j)

West Virginia Code 62-3-21

West Virginia Code 62-14-1

State ex rel. Stines v. Locke , 220 S.E. 2d 443 (WV 1975)

IV Argument.

1. The Court should not permit the State to use West Virginia Code 5-1-9(j) to keep the Respondent incarcerated in West Virginia on out-of-state charges when he has made bond on his West Virginia Charges and voluntarily seeks to return to the demanding jurisdiction.² The purpose of the Uniform Extradition Act is to facilitate the return of fugitives from one state to another, and to ensure that no state becomes a haven for alleged wrongdoers. The Act itself is the result of a Constitutional mandate found at Article IV Section 2 of the United States Constitution.

In this case the Respondent has been made aware of charges against him in the Commonwealth of Virginia and has elected to waive his right to invoke the formal procedures set forth under the Extradition Act. Such waivers of extradition are an everyday occurrence in the Circuit Courts of West Virginia, especially in the border counties. Because the Extradition Act has not been invoked and the underlying mandatory procedures have not taken place, it is not applicable, and the State has no authority to invoke Section 5-1-9(j) of the Act.

2. If the Extradition Act is in fact applicable, Section 5-1-9(j) states that the "Governor" may decline to return an individual until the completion of trial and punishment in the asylum state. The term "Governor" is defined by West Virginia Code 5-1-7 as including "any person performing the functions of governor by authority of the law of this state." A Prosecuting Attorney can obviously not issue a Governor's Rendition Warrant for the return of an individual from another state; and the state cites no authority for the Proposition that the Prosecuting

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Counsel for the Respondent has been unable to find any reported decisions construing this Section in this State.

Attorney may act in place of the Governor in refusing to return an individual to the demanding state. Therefore, the Prosecuting Attorney lacks the statutory authority to refuse to return an individual to the demanding state.

3. Finally, if the Extradition Act is applicable and the Prosecuting Attorney has standing to in his or her discretion to refuse to return a fugitive pending resolution of the West Virginia charges, then Section 5-1-9(j) is unconstitutional as applied to the respondent and other individuals in the same factual position as the defendant. It is undisputed that the Respondent in this case is entitled to fundamental due process of law under the United States and West Virginia Constitutions.^{3 4 5 6} The Fifth Amendment to the United States Constitution specifically states that "No person...shall be deprived of life, liberty, or property without due process of law...." Permitting the State to incarcerate individuals in a pretrial status for charges in other jurisdictions for periods of time at its discretion for periods of up to one year (under the State's Three Term Rule argument) , and without any credit for time served, is clearly a violation of the Fifth

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United States Constitution, 5th Amend. The Fifth Amendment guarantees that no person shall be deprived of life, liberty, or property without due process of law.,

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United States Constitution, 14th Amend. The Fourteenth Amendment guarantees that no state shall deprive any person of life, liberty, or property without due process of law.

5

West Virginia Constitution, Article III, Section 10. Article III, Section 10 guarantees that no person shall be deprived of life, liberty or property, without due process of law and the judgment of his peers.

6

West Virginia Constitution, Article III Section 20. Article III, Section 20 states that free government and the blessing of liberty can be preserved to any people only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.

Amendment's prohibition on deprivation of liberty without due process of law.⁷ This incarceration would be solely on the basis of pending charges in another jurisdiction, which the State, in its discretion, could prevent detainees such as the Respondent, from resolving.

4. The State's argument that it may be somehow prejudiced if the Defendant is permitted to return to Virginia is without merit. In State ex rel. Stines v. Locke, 220 S.E. 2d 443 (1975), cited by the State, the terms of Court the defendant was incarcerated in another state were counted against the State under the three-term rule solely because the State failed to apply under West Virginia Code 62-14-1 to seek custody of the defendant for trial. The right to a speedy trial is obviously the Defendant's right and not the State's. While it is true that the State may be inconvenienced by being required to file routine forms with the Commonwealth of Virginia to secure the Defendant's presence for trial if he returns to Virginia, such inconvenience to the State is surely minimal when compared to the continued incarceration of the Defendant in this case.

Moreover, since the State bases its claim on the Three Term Rule, the State by inference must believe that no substantial injustice would occur if the defendant were held for trial until the end of the third term.⁸ The State also ignores the obvious conclusion that if the Respondent is returned to Virginia and the State makes a request for the Respondent for trial pursuant to West

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The Court's approval of such a practice would also raise the unsettling spectre of the State coercing pleas to local charges in return for permitting a defendant to return to the demanding state rather than accrue substantial "dead time."

8

Although Respondent's West Virginia trial is currently scheduled Feb. 15, 2006, with over 100 indictments returned in the October 2005 term and arraignments not complete, it does not appear that date can be relied upon. Paradoxically, although the Respondent is incarcerated, it is unclear whether he is entitled to trial in this term of Court because he is admitted to bond in West Virginia.

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Virginia Code 62-14-1, the Three Term Rule would undoubtedly be tolled for those terms of Court the Respondent was out of the jurisdiction.

The Respondent enjoys a presumption of innocence in Virginia as well as West Virginia. Under the State's novel theory, the Respondent could be imprisoned in West Virginia for essentially a year on the Virginia charges. The Respondent in this action has substantial Constitutionally protected interests. These include a right to trial on the Virginia charges under the Sixth Amendment, an interest in his personal freedom under the Fourth and Fifth Amendments, and a right to Due Process of Law under the Fifth and 14th Amendments to the United States Constitution and the corresponding sections of the West Virginia Constitution. The only state interest which is being asserted is inconvenience - the State may have to fill out some forms - obviously not the type of compelling state interest which would require an abridgement of substantial Constitutional rights. Petitioner offers only the speculative assertion that it might be prejudiced under the Three Term Rule if it failed to file the proper forms to seek the return of the Respondent for trial as a grounds for keeping the Respondent incarcerated.

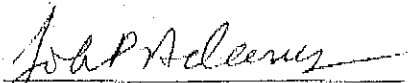
The Respondent respectfully requests that the Court balance the respective interests presented in this case. The Respondent has already waived his right to invoke the formal procedures of the Uniform Extradition Act, and its lengthy requisition and habeas processes, and has requested that he be returned to the State of Virginia so that he may resolve the outstanding charges. The State is seeking to avoid the inconvenience of having to obtain temporary custody of the Respondent and transport him back to the jurisdiction for trial. The possible cost to the Respondent for avoiding this "inconvenience" is up to a year of "dead time" in a West Virginia facility. Up to a year of a man's life to free the State from a little paperwork is an

unconscionable and unconstitutional balancing of interests.

The Circuit Court of Berkeley clearly recognized the proper balancing of interest and made the correct ruling. Accordingly, the Defendant should be permitted to waive extradition and return to the Commonwealth of Virginia and no Writ of Prohibition should issue from this Court.

Respectfully submitted this 2nd day of November 2005.

JASON ERIC VAN METRE
BY COUNSEL



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304 263 8909

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

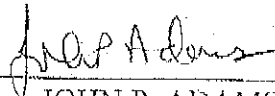
VS.

CASE NO: 05-F-297
DIVISION I

JASON ERIC VAN METRE,
Defendant.

CERTIFICATE OF SERVICE

I, John P. Adams, Public Defender do hereby attest that a true copy of the attached
RESPONDENT VAN METRE'S OPPOSITION TO STATE'S PETITION FOR PROHIBITION
AND STAY, has been delivered to the Circuit Judge for Berkeley County, Judge David Sanders
at his office located at 100 W. King St., Martinsburg, WV 25401 on this 2nd day of
November, 2005.



JOHN P. ADAMS #5967

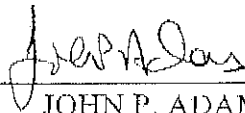
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STATE OF WEST VIRGINIA

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RESPONDENT VAN METRE'S OPPOSITION TO STATE'S PETITION FOR PROHIBITION
AND STAY, has been delivered to the Prosecuting Attorney for Berkeley County, Pamela Jean
Games-Neely at her office located at 101 S. Spring St., Martinsburg, WV 25401 on this 2ND
day of November, 2005.

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JOHN P. ADAMS #5967