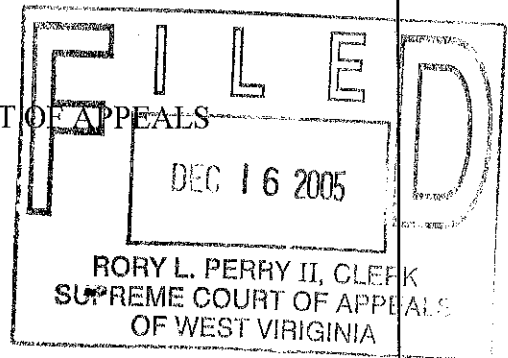


BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS



STATE OF WEST VIRGINIA ex rel.
PAMELA JEAN GAMES-NEELY,
Prosecuting Attorney,

Petitioner,

v.

DOCKET NO.: 32875

HONORABLE DAVID H. SANDERS,
Circuit Judge, 23rd Judicial Circuit,
and JASON ERIC VANMETER,

Respondent.

PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW

Comes now the petitioner, by Christopher C. Quasebarth, Assistant Prosecuting Attorney, pursuant to this Honorable Court's Order dated November 23, 2005, permitting the petitioner to file a supplemental memorandum of law in support of her Petition for a Writ of Prohibition.

This case presents a case of first impression for this Court concerning the Uniform Criminal Extradition Act (codified in West Virginia at **W. Va. Code** §§ 5-1-7 through 13) when the defendant is simultaneously prosecuted for felonies in separate sovereign jurisdictions.

FACTS.

In this case, the respondent Jason Eric Vanmeter is a criminal defendant ("defendant"), under an October 2005 term indictment in Berkeley County for the felony offense of Robbery in the Second Degree, committed on or about July 20, 2005. [State v. Vanmeter, Case No.: 05-F-297.] The defendant was arraigned on October 24, 2005, and trial was scheduled in the October 2005 term of court for February 15, 2006. The defendant posted bail at \$30,000.00 surety.

Meanwhile, in unrelated criminal conduct, the defendant was also indicted in the Commonwealth of Virginia on September 8, 2005, for the felony offenses of Grand Larceny and Robbery, committed on July 14 and July 22, 2005, respectively. [Comm. v. Vanmeter, Case Nos.: CR050000725-00 and CR050000726-00.] The Commonwealth of Virginia seeks the return of the defendant on her felony indictments. The defendant is currently detained in the Eastern Regional Jail on a fugitive warrant on those charges with bail set at \$10,000.00 cash. [State v. Vanmeter, Berkeley County Magistrate Court Case No.: 05-F-1294.]

The defendant wants to waive extradition to Virginia. The State wants to exercise its right under **W. Va. Code § 5-1-9(j)** to refuse to return him to Virginia until he is tried in West Virginia. The respondent Circuit Court Judge ruled that he will allow waiver of extradition. This Court agreed to hear the petitioner's Petition to prohibit the Circuit Court from enforcing that ruling. Argument is scheduled for January 10, 2006.

AUTHORITIES RELIED UPON.

United States Constitution Art. IV, sec. 2, cl. 2

Michigan v. Doran, 439 U.S. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978)

Taylor v. Taintor, 83 U.S. 366, 371, 16 Wall. 366, 21 L.Ed. 287 (1872)

Barton v. Norrod, 106 F.3d 1289, 1297, *reh. denied* (6th Cir. 1997)

State v. Carter, 204 W.Va. 491, 513 S.E.2d 718 (1998)

State ex rel. Stines v. Locke, 159 W.Va. 292, 220 S.E.2d 443 (1975)

State ex rel. Caton v. Sanders, 215 W. Va. 755, 601 S.E.2d 75 (2004)

Hinkle v. Black, 164 W. Va. 112, 262 S.E.2d 744 (1979)

State v. Robbins, 124 N.J. 282, 590 A.2d 1133 (1991)

State v. Williams, 92 N.J. Super. 560, 224 A.2d 331 (1966)

Davis v. Rhyne, 181 Kan. 443, 312 P.2d 626, 631 (1957)

People ex rel. Gallagher v. Hagan, 34 Misc. 85, 69 N.Y.S. 475, 477 (1901)

Paley v. Bieluch, 785 So.2d 692 (D.C.App.Fla.4th D. 2001)

In re Lane, 17 Kan.App.2d 476, 845 P.2d 708 (1992)

SER Ehlers v. Endicott, 188 Wis.2d 57, 523 N.W.2d 189 (App. 1994),
rev. denied, 531 N.W.2d 326 (Wis. 1995)

SER Miller v. Columbia County Sheriff, 128 Wis.2d 479, 383 N.W.2d 499,501 (App. 1986)

W. Va. Code § 5-1-7 through 13

W. Va. Code § 5-1-9(d)-(I)

W. Va. Code § 5-1-9(f) and (h)

W. Va. Code § 5-1-9(j)

W. Va. Code § 62-3-21

DISCUSSION.

The central issue presented to this Court is whether a criminal defendant admitted to bail on a West Virginia felony indictment for which he has been arraigned, yet is incarcerated with bail set on a fugitive warrant from another jurisdiction, may force the State to allow him to waive extradition to the other jurisdiction? Such an outcome is contrary to the purposes of the Extradition Clause, *United States Constitution* Art. IV, sec. 2, cl. 2, as that clause does not confer any rights on the fugitive but applies concepts of “comity and full faith and credit” on the states. *See: Michigan v. Doran*, 439 U.S. 282, 287-288, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978). *See also: Barton v. Norrod*, 106 F.3d 1289, 1297, *reh. denied* (6th Cir. 1997).

The matter of extradition is a question of comity between the states, over which the person to be extradited has no control. *State v. Robbins*, 124 N.J. 282, 590 A.2d 1133, 1136 (1991), *citing State v. Williams*, 92 N.J. Super. 560, 224 A.2d 331 (1966). *See also: Davis v. Rhyne*, 181 Kan. 443, 312 P.2d 626, 631 (1957): “The question of priority of jurisdiction is one of comity between the respective sovereignties and not one of personal right of the prisoner.”; and *People ex rel. Gallagher v. Hagan*, 34 Misc. 85, 69 N.Y.S. 475, 477 (1901): “If he has committed offenses against the laws of two states, it is not for him to choose in which state he shall be held to answer. Naturally he would always choose that in which the punishment would be the lighter, or the chances of conviction the least.”

Aside from the clear pronouncements that extradition is a matter between the states, over which the defendant can exercise no choice, the practical effects for the State in this and other like cases may be profound. If a defendant may choose which state he prefers to face criminal charges in and, as in this case, does not choose West Virginia, the State’s evidence may become stale, the State’s witnesses may disappear, the State may find that the defendant later chose to be extradited to a third or fourth jurisdiction, or the State may be forced to incur undue expense in having defendants returned from some distant jurisdiction.

The State asks this Court to hold that a criminal defendant, such as this one, may not force the State to allow his waiver of extradition to another jurisdiction while he has a pending criminal charges in this State. The State further asks this Court to hold that the time limits

imposed by statute within which a Governor's Warrant is to be obtained are suspended pending resolution of the State's charges.

The State's extradition statute is plain and unambiguous that if return of the defendant were demanded by the Governor of Virginia, the Governor of West Virginia could refuse to return him "until he has been tried and discharged or convicted and punished in this state." **W. Va. Code § 5-1-9(j)**. However, the lesser legal device of a fugitive warrant is at play here. The State's extradition statute addresses the general procedure for the execution of fugitive warrants, but does not plainly address the procedure to be applied to the facts presented herein. *See: W. Va. Code § 5-1-9(d)-(i)*. The defendant, not having a right to choose the jurisdiction in which he will be tried, should not be allowed such a right when a fugitive warrant is pending.

The defendant is admitted to bail on the West Virginia Robbery indictment. This is a fact which should have no effect upon this Court's analysis of this case. The admission to bail is simply an extension of the State's custody, with the defendant's sureties assuming his custody. "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment." Taylor v. Taintor, 83 U.S. 366, 371, 16 Wall. 366, 21 L.Ed. 287 (1872).¹ *See also: People ex rel. Gallagher v. Hagan, supra*, 34 Misc. 85, 69 N.Y.S. 475, 476 (1901):

The fact that in this particular case the relator, although under conviction, is actually at large on bail, does not, in my opinion, affect the application of the rule. He still owes to this state a debt of imprisonment as a punishment for the crime against the laws of this state of which he has been convicted. He is still theoretically in the grasp and custody of the law. Having given bail, he is merely regarded as delivered into the custody of his

¹In Taylor, a criminal defendant was arrested in Connecticut and admitted to bail. A term of his bail permitted his travel to New York. While in New York, he was extradited pursuant to a Governor's Warrant to Maine, where he was then tried, convicted and sentenced for crimes committed there. His Connecticut bail was forfeited when he subsequently failed to appear in Connecticut court. His bondsman sought to be discharged from liability on the bail. The Supreme Court held that the extradition from New York to Maine was not an act of law performed by Connecticut, and the bondsman was, therefore, liable for the non-appearance of the principal in derogation of the terms of his bail.

sureties, and their dominion over him is but a continuance of his original imprisonment. [*Citing Taylor v. Taintor.*] It is not the fact of actual physical incarceration but the fact that the person sought to be extradited has been held to answer for a debt due to the law of the state in which he is found, that justifies the refusal of that state to surrender him until its demands upon him have been satisfied.²

West Virginia's extradition statute, **W. Va. Code** § 5-1-7 through 13, is an adoption of the Uniform Criminal Extradition Act. The State's research reveals that approximately 43 other states have adopted the Act. As a uniform act, the interpretations of other courts may be helpful in construing the statute. Paley v. Bieluch, 785 So.2d 692, 694 (D.C.App.Fla.4th D. 2001).

The State's research reveals that three jurisdictions which have addressed the issue of a criminal defendant detained on fugitive warrants while local charges are pending have held that the statutory time limits on obtaining a Governor's Warrant are suspended until the local charges are resolved.

In Paley, *supra*, a criminal defendant was serving a sentence in the Collier County jail on August 22, 2000, when a fugitive warrant from Georgia was served on him. He refused to waive extradition to Georgia and was held without bail on the fugitive warrant. Georgia was notified to begin extradition proceedings. Collier County then discovered that the defendant was wanted in other Florida counties and notified Georgia to delay extradition. The defendant was then moved to Monroe County at the expiration of his Collier County sentence on October 16, 2000. From Monroe County, he was transported to face charges in Palm Beach County on December 27, 2000. From Palm Beach County, he was to be transported to St. Lucie County for charges there in February 2001. The defendant posted bail on the St. Lucie charges while in Palm Beach County. He then filed a habeas against Palm Beach authorities, claiming that the 90-day

²In Gallagher, a criminal defendant challenged his extradition from New York to New Jersey while admitted to post-conviction bail pending outcome of appeal from his New York conviction. The court denied the challenge.

maximum time limit to obtain a Governor's Warrant on the Georgia charges was expired.³

The Paley court held that the extradition statute's thirty and sixty day time limitations on obtaining a Governor's Warrant is suspended pending disposition of local charges. 785 So.2d 692, 694-695.

The Paley court relied on decisions from two other jurisdictions also holding that the 90 day time limitations are suspended while local charges are pending. In In re Lane, 17 Kan.App.2d 476, 845 P.2d 708 (1992), a criminal defendant was arrested in Kansas on a Texas fugitive warrant. Afterwards, he was charged with local felony offenses, which were dismissed ninety-two days after commitment on the fugitive warrant. The Lane court held that the filing of local charges tolls the ninety day time limit to obtain a Governor's Warrant. SER Ehlers v. Endicott, 188 Wis.2d 57, 523 N.W.2d 189 (App. 1994), *rev. denied*, 531 N.W.2d 326 (Wis. 1995), holds that the 30 and 60 day time periods apply only to fugitives not already in custody pending other charges. SER Miller v. Columbia County Sheriff, 128 Wis.2d 479, 383 N.W.2d 499,501 (App. 1986), holds that once the local charge is no longer pending, the extradition time limit provisions apply.

Following the holding of Michigan v. Doran, *supra*, 439 U.S. 282,(1978), that extradition is a matter of comity between the states, and the holdings of those jurisdictions that extradition is not a matter of choice for the fugitive, the State asks this Court to hold that this defendant may not waive extradition under the circumstances presented herein so as to choose his forum of prosecution. The State further asks this Court to follow the holding of Paley, and the jurisdictions it relies on, and hold that those same time limitations, as found here in **W. Va. Code § 5-1-9(f) and (h)** do not apply, and that this defendant may remain lawfully detained on the \$10,000.00 bail set on the fugitive warrant until such time as the local charges are resolved.

There can be no question that the defendant's speedy trial rights under **W. Va. Code § 62-3-21** attached upon his October 24, 2005, arraignment on the felony Second Degree Robbery

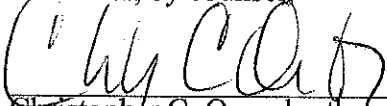
³See: **W. Va. Code § 5-1-9(f) and (h)** for the 30 and 60 day time limitations (totaling 90 days) in which to obtain a Governor's Warrant after arrest on a fugitive warrant.

indictment. State v. Carter, 204 W.Va. 491, 513 S.E.2d 718 (1998). Under **W. Va. Code § 62-3-21**, the State has three terms of court (not including the term of indictment) to commence trial or the defendant may be discharged. *Id.* This Court holds that where the State allows a criminal defendant facing local charges to be relinquished to another jurisdiction, the defendant's speedy trial rights are not tolled and discharge is the remedy if a violation of those rights is found. State ex rel. Stines v. Locke, 159 W.Va. 292, 220 S.E.2d 443 (1975). The State cannot voluntarily assume that risk.

RELIEF REQUESTED.

The State respectfully requests that this Court grant the Writ of Prohibition to prohibit the respondent Circuit Court Judge from permitting the respondent Jason Vanmeter to be returned to the Commonwealth of Virginia over the objection of the State while awaiting his felony trial in Berkeley County. State ex rel. Caton v. Sanders, 215 W. Va. 755, 601 S.E.2d 75 (2004); Hinkle v. Black, 164 W. Va. 112, 262 S.E.2d 744 (1979).

Respectfully submitted,
Petitioner, by counsel.



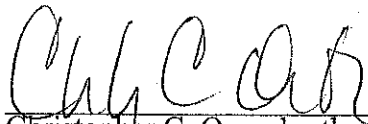
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304-264-1971

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true copy of the foregoing
PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW on this the 15th day of
December, 2005, by first class mail, postage pre-paid, to:

Honorable David H. Sanders, Judge
Berkeley County Circuit Court
100 W. King Street
Martinsburg, West Virginia 25401

John P. Adams, Esq.
Assistant Public Defender
105 Berkeley Plaza
Martinsburg, West Virginia 25401



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